IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal No. 1472 of 2000

The Correspondent,
Avila Convent Matriculation Higher
Secondary School, Coimbatore. ... Appellant/3rd Respondent

Vs.

1.The State of Tamil Nadu,
rep. by its Director of School
Education, Chennai-6.

2.The Inspector of Matriculation Schools,
Ramanathapuram, Coimbatore.

3.N.Radhakrishnan ... Respondents 1 and 2/Petitioner

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 24.03.2000 made in W.P.No.17335 of 1992. petition under article 226 of the Constitution of India pryaing that in the circumstances stated therein in the affidavit filed therewith this Court will be pleased to issue writ of Mandamus directing the respondents to forthwith settled the Death cum Retirement Gratuity and a Family Pension as claimed by the petitioner in his letter dated 11.02.1992 and pay the same to the petitioner in accordance with law within a reasonable time as may be fixed by this Court.

For Appellant : Ms.P.T.Asha for M/s.Sarvabhauman Associates

For Respondents 1 & 2 : Mr.M.Dhandapani, Addl. Government Pleader

For Respondent-3 : No appearance

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal has been filed against the order of the learned single Judge dated 24.03.2000 made in W.P.No.17335 of 1992, in and by which the learned single Judge has directed the management to pay pension to the writ petitioner.

2. Heard the learned counsel appearing for the appellant and the learned Additional Government Pleader for respondents 1 and 2. Though the third respondent-writ petitioner ha been duly served notice from this Court in this appeal, he has not chosen to contest the same by engaging a counsel.

3. The writ petition was filed by the third respondent herein, husband of one M.R. Vasanthika, who served as a Secondary Grade Tamil Pandit in the third appellant-school from 12.06.1978 to 09.09.1991. It is also seen that in view of the death of Vasanthika in a road accident, the writ petitioner-her husband and her minor son, her legal heir, prayed for his education and other benefits. It is further seen that based on the last drawn pay, the gratuity of Rs.14,976/- alone was paid and aggrieved by the refusal for payment of pension, the third respondent herein has filed the said writ petition.

4. Before the learned single Judge, the Inspector of Matriculation School, Coimbatore, the second respondent therein, filed a counter affidavit stating that the said teacher M.R. Vasanthika worked as a Secondary Grade Teacher in Avila Convent Matriculation Higher Secondary School from 12.06.1978 and 09.09.1991 and she put in a service of 13 years 2 months and 29 days. It is stated in the letter dated 10.11.1981 of the Inspector of Matriculation Schools, Madras, without any contribution from the Government, that the management of Matriculation School should adopt pension, gratuity and Provident Fund Schemes. According to the Government Rules, as per the letter dated 13.01.1992, the Correspondent has stated that she has been given the benefits as per G.O. Ms. No.57 dated 24.02.1990. With regard to the applicability of G.O. No.1030/Fin./Dt.14.12.1987, it is stated that the same is applicable to Government servants, employees of local bodies and aided teaching institutions only and not to Matriculation Schools.

5. The appellant herein, who was the third respondent before the learned single Judge, has filed a counter affidavit stating that their school is an unaided Matriculation School and none of the Government Order or

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circular is applicable to the institution. The school is not receiving any aid from the Government. The school is not bound to give pension or gratuity on par with the Government staff as the institution is a Matriculation School and an unaided one. It is further stated that the circular mentioned in para 4 of the affidavit has no application. In fact, the third respondent school being a self-financing one and not getting any grant or financial assistance from the Government, and as per Chapter-V Clause 16(i)(ii) of the code of Regulation for Matriculation School in Tamil Nadu, the Matriculation School enjoys a financial autonomy and their school being a private Matriculation School, had adopted a death-cum-retirement gratuity on its own volition and as per the scheme prevailing, M.S. Vasanthika, wife of the writ petitioner, was entitled to only Rs.14,976/- towards gratuity and the same has been paid to the petitioner and his son even on 19.02.1997.

6. When the said writ petition was taken up for hearing on 24.03.2000, the learned single Judge, relying on the circular dated 10.11.1981 issued by the Inspector of Matriculation School, after rejecting the stand taken by the school management, allowed the writ petition. It is seen that again the matter was heard and final order was passed on 24.03.2000. The said order is under challenge in this appeal. Hereagain, the learned Judge, relying on the Circular dated 10.11.1981 issued by the Inspector of Matriculation School, accepted the claim of the petitioner and directed the management to pay pension as claimed and confirmed her earlier order dated 01.03.2000.

7. The learned counsel appearing for the appellant-management school pointed out that it is not in dispute that their school is an unaided institution. It is also their specific stand that in view of the fact that they are not getting any grant or financial assistance from the Government and their school being a private Matriculation school, adopting the death-cum-retirement gratuity out of their own volition, they settled Rs.14,976/- towards gratuity and the same has been received by the writ petitioner and his son as early as on 19.02.1997. In view of the factual position, the learned counsel for the appellant, by relying on the decision of the Apex Court reported in (2002) 8 SCC 481 (TMA. PAI Foundation and others Vs. State of Karnataka and others), particularly, paragraph 161 of the said decision, submitted that the circular referred to and relied on by the learned single Judge is not applicable to them, consequently, the order passed by the learned single Judge is liable to be set aside. Among the various questions raised and considered in the judgment in Pai Foundation case, we are concerned with question 5(c) in paragraph 161 and the answer

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thereto, which reads as follows :

> "Q.5.(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?
>
> A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.
>
> For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.
>
> The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.
>
> Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff."

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8. The above direction makes it clear that regulations can be framed, governing the service conditions for teaching and other staff, for whom aid is provided by the State. In the case of the appellant herein, we have already reiterated that it is their definite case that they are not getting any aid from the State Government. The said aspect has not been disputed. In such circumstances, we are unable to accept the conclusion arrived at by the learned single Judge. We have already referred to the scheme framed by the appellant-school and the fact of settlement of gratuity amount even on 19.02.1997.

9. In the light of what is stated above, the order of the learned single Judge dated 24.03.2000 made in W.P.No.17335 of 1992 is set aside and the writ appeal is allowed. No costs.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Director of School Education,
Chennai-6.

2.The Inspector of Matriculation Schools,
Ramanathapuram, Coimbatore.'

+ one cc to the Government Pleader srno. 26675
+ one cc to M/s Sarvabhuman Associates, Advocates sr no. 26418

PLI(CO)
NM(03.07.2006)

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